

Lokesh Vs. A.P. Devi and Another

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Court : Karnataka

Decided On : Apr-21-2011

Judge : Aravind Kumar

Appeal No. : M.F.A.No.27 of 2007 (MV)

Appellant : Lokesh

Respondent : A.P. Devi and Another

Advocate for Pet/Ap. : For the Petitioner: Appellant: Bhushani Kumar, Advocate.
For the Respondent: R2 - R. Rajagopalan, Advocate.

Judgement :

(Prayer: This MFA is filed U/S 173(1) of MV Act, against the Judgment and award dated 27.9.2006 passed in MVC No.29/1998 on the file of the Addl. Civil Judge, (Sr. Dn) Addl. MACT. Tumkur, partly allowing the claim petition for compensation and seeking enhancement of compensation.)

1. This is claimant's appeal questioning the correctness and legality of judgment and award passed by Civil Judge (Sr.Dn.) and MACT. Tumkur in MVC No.29/1998 dated 27.9.2006 whereunder claim petition came to be allowed in part by awarding a compensation of Rs.4,29,866/- with interest at 6% per annum from the date of petition till date of payment and insurer has been absolved of its liability and fastening liability on first respondent / owner.

2. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the appellant seeking compensation of Rs.5,00,000/- with interest at 12% per annum contending that on 16-11-1997 at about 6.30 p.m. when he was travelling in a goods vehicle bearing No.TN28 2566 as loader/unloader along with consignment, it met with an accident on account of said lorry being driven in a rash and negligent manner and as such it was contended that claimant sustained crush injury to his left leg amongst other injuries sustained and consequential suffered disability.

3. 1st Respondent did not appear and contest the matter and was placed ex-parte. Respondent No.2 namely insurer alone filed written statement and averments made in the claim petition was denied. It was denied that claimant was working under first respondent and during the course of his employment accident in question occurred. It was contended that claimant was a minor and was aged 17 years only as such he was prohibited to be employed under Section 3 of the Child Labour Act and provisions of Child Labour Act was attracted. It was also contended that there was violation of the terms of the policy and on these grounds Insurer sought for dismissal of claim petition. On the basis of pleadings of parties tribunal framed following issues.

(1) Whether the claimant proves that on 16.11.97 at 6.30 p.m. near Kora Village on NH-4 when he was travelling in lorry bearing No. TN28 2566 as loader and unloader of said lorry, then there was accident due to rash and negligent driving of said lorry by its driver, thereby the present claimant sustained injuries?

(2) Whether the claimant is entitled for compensation? If so, from whom?

4. Tribunal after considering the pleadings of the parties and also evidence on record allowed the claim petition in part and awarded compensation of Rs.4,29,866/- with interest at 6% per annum payable by first respondent owner and absolved the insurer by dismissing the claim petition against Insurance Company. It is this judgment and award which is questioned in the present appeal seeking for enhancement and to fix liability on the Insurance company.

5. Heard Smt. Bhushani Kumar, learned counsel appearing for the appellant/claimant and Sri.R.Rajagopalan, learned counsel appearing for the respondent/insurer. R-1 is served and unrepresented.

6. It is the contention of Smt. Bhushani Kumar that tribunal was not justified in holding that second respondent insurer is not liable to pay compensation since there was valid insurance policy issued by the second respondent of the offending vehicle and same was in force and vogue as on the date of the accident. She would further contend that petitioner was travelling as a loader/unloader in the offending vehicle and insurer having collected premium for employees there would be legal liability on the insurer to indemnify the insured and satisfy the amount awarded by the Tribunal. Alternatively she would also draw the attention of the Court to the Policy issued to the offending vehicle which has been produced by the learned counsel for the second respondent on 12.11.2010 to contend a premium of Rs.50/- has been additionally collected from the insured which covers legal liability to non-fare paying passenger as per IMT No.13 and as such insurer is liable to indemnify the insured. She would also contend that compensation awarded under various heads is abysmally low and tribunal erred in awarding a very low compensation and seeks for enhancement of the compensation under all heads.

7. In support of her submission she has relied upon the following judgments:

(i) ILR 2007 Kar 3885.

Branch Manager, M/s. United India Insurance Co., Ltd., Vs. Kalavathi and others.

(ii) Unreported Judgment dated passed in MFA 969/2004 (MV) DB Govindamma Vs. Venkat Rao and another.

(iii) Unreported Judgment dated 7-1-2011 passed in MFA 8060/2007 C/w 8061 and 8062/2007. Master Arun Kumar Vs.B.A.Ismail and others.

8. Per contra Sri.R. Rajagopalan, learned counsel appearing for the insurer would support the judgment and award passed by the tribunal and contends that claimant was a gratuitous passenger and hence the liability of the Insurance

Company does not arise and no material was placed to demonstrate that claimant was working as a loader and as such the claimant has been held to be a paid passenger and as such no liability can be fixed on the Insurance Company. He would draw the attention of the Court to IMT 13 to contend that additional premium collected in the instant case would cover such of those persons as envisaged under Clause (ii) of IMT 13 and claimant in the instant case would not come under any of the categories enumerated in (a) to (c) of Clause (ii) of IMT 13 and as such he contends that tribunal was justified in absolving the insurer from payment of award amount. He would elaborate his submission by contention the policy in question issued to the offending vehicle does not cover the claimant even if he is construed to be a non-fare paid passenger since premium is collected to cover those persons as enumerated in clause-13(ii) and none else and as such Insurance Company cannot be fastened with liability.

9. Having heard the learned advocates appearing for the parties following points arise for my consideration:

(i) Whether the judgment and award of the Tribunal absolving the insurer from payment of compensation is in accordance with the provisions of the M.V. Act, contract of Insurance Policy and IMT Regulations?

(ii) Whether the claimant is entitled for enhancement of the compensation and if so, to what extent?

(iii) To what order?

10. The accident in question, issuance of policy to the offending vehicle and same being in force/vogue as on the date of accident is not in dispute. Hence, these facts are not delved upon in this appeal.

11. Claimant sought for compensation by filing a claim petition under Section 166 of M.V. Act, 1988 contending that he was travelling in the offending vehicle on the date of accident as a loader/unloader. Except the self serving testimony of claimant no other material has been produced by claimant before tribunal. Owner of the vehicle neither appeared nor contested the claim petition. He was not

examined by the claimant as a witness. Driver of the offending vehicle was also not examined by claimant. On the other hand insurer has contended that claimant was not working as a loader/unloader in the offending vehicle on date of the accident in the offending lorry in its statement of objections. To substantiate its defence insurer examined its officer as R.W.2 and it has been brought on record by the insurer that claimant was a minor as on the date of the accident. The letter issued by the Aryan High School Association (R). B.H. Road. Tumkur, dated 20-7-2006 came to be produced and marked as Ex.R.1 which depicts that claimant was studying during the academic year 1997-98 (Date of accident 16.11.1997) in the said school in VIII Standard. Even in the claim petition at column No.3 the age of the injured has been shown as 17 years as also in column No.22. However, in the claim petition as well as in evidence it has been specifically stated by claimant that he was working as a loader/unloader in the offending lorry. No material whatsoever has been produced to establish this fact. It was also noticed by the Tribunal from the evidence of P.W.1 itself that claimant and his father had gone to their native place to bring Ragi and while so returning they had boarded the offending vehicle. The Tribunal having noticed these discrepancies held that claimant was travelling as a paid passenger.

12. In so far as the liability of the Insurance Company is concerned tribunal held that claimant was a paid passenger and applied the law laid down by Hon'ble Supreme Court in Asha Rani's reported in 2003 ACJ 1 and held that Insurance Company is not liable to pay compensation to the claimant and hence petition against Insurance Company came to be dismissed.

13. The accident in question took place on 16-11-1997 i.e., after coming into operation of Amendment Act of the Act of 1988. Insurance Company would be liable to pay compensation for injuries sustained by the owner of the goods or his authorised representative travelling in a vehicle. Statutory liability is fastened on the Insurance Company to pay compensation to the employee of the insured who is engaged as a driver, conductor or an employee carried in a goods carriage to the extent of liability payable under the Workmen's Compensation Act, 1923. Under the Act liability Gratuitous and non gratuitous passenger are not covered.

14. In the instant case it is the contention of the claimant that an additional premium of Rs.50/- has been collected to cover “legal liability to non-fare paying passengers” as per IMT No.13” and as such it is contract entered into between the Insurance Company and the insurer to cover those persons who do not fall under the Act liability and hence Insurance Company cannot be absolved of its liability.

15. In order to examine this contention, it would be necessary to extract Sections 140, 145 and 147(5) of IMV Act and IMT 13.

“Section 140: Liability to pay compensation in certain cases on the principle of no fault:(1). Where death or permanent disablement of any person has been resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) xxxxx

(3) xxxxx

(4) xxxxx

(5) xxxxx

proviso xxxxxx

Section 145. Definitions: In this chapter:

(a) “authorised insurer” means xxxxxxxx

(b) “certificate of Insurance” means xxxxxxxx

(c) “Liability” wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under Section 140.

(d) Xxxxxxxxxxxxxx

(e) Xxxxxxxxxxxxxx

(f) XXXXXXXXXXXXXXXX

(g) XXXXXXXXXXXXXXXX

Section 147: Requirement of policies and limits of liability: (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which:-

(2) XXXXXXXXXXXXXXXX

(3) XXXXXXXXXXXXXXXX

(4) XXXXXXXXXXXXXXXX

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of Insurance under this Section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons”

(Emphasis supplies by me)

IMT 13: Legal Liability to Non-fare paying passengers other than Statutory Liability except the Fatal Accidents Act, 1855 (Commercial Vehicles only)

In consideration of the payment of an additional premium of Rs.....and notwithstanding anything to the contrary contained in Section 11-1(b) and (c) it is hereby understood and agreed that the company will indemnify the Insured against his legal liability other than liability under the Statute (except the Fatal accidents Act 1855) in respect of death of or bodily injury to:-

(i) any employee of the within named insured who is not a workman within the meaning of the workmen’s compensation Act prior to the date of this endorsement and not being carried for hire or reward.

(ii) Any other person not being carried for hire or reward provided that the person is

- (a) The owner or representative of the owner of the goods
- (b) Charterer or representative of the charterer of the truck.
- (c) Any other person directly connected with the journey in one form or other.

Being carried in or upon or entering or mounting or alighting from any Motor Vehicle described in the Schedule of the Policy.

Subject otherwise to the terms exceptions conditions and limitation of this Policy.”

16. The contract of Insurance policy is issued to meet the requirement of Chapter X and XI of the Motor Vehicles Act. The liability as defined under clause (c) of Section 145 includes liability in respect of payment of compensation as required to be paid under Section 140. Thus, legal liability would mean and include liability under the Motor Vehicles Act. Section 147 stipulates the requirements of the policy and limits of liability there under. Under Sub-section (5) of Section 147 which is a non-obstante clause provides for a contract being entered into between the Insurance Company and the insurer to cover the risk of such of those persons who do not fall under Section 147 of the Act and in such circumstances those persons specified in the policy to be covered thereunder an additional premium would be collected and only such of those persons would be entitled to make a claim against Insurance Company arising out of the injuries sustained by them and in such circumstances Insurance Company would be liable to indemnify the insurer. In this background it would be necessary to examine the Insurance policy in question which is issued to the offending vehicle. The breakup of the premium collected by the Insurer while issuing the contract of Insurance Policy to the offending vehicle is as under:

B. Liability to Public RiskLess: 20% if the vehicle is used for carriage of own goods.	Rs.1245.00
Add: for LL to non-fare paying passengers as per IMT No.13.	Rs.50-00

Add: for LL to non-fare paying passengers as per IMT No.14	
Add: For LL to persons employed in connection with the operation and/or Loading/Unloading of Motor Vehicle IMT 17	Rs.135-00
Add: For increased third party property damage Sec.11-(iii) upto Rs.(unlimited)	Rs.75-00
PA to paid driver as per ENDT 6	Rs.90-00
Total B	Rs.1595-00
Total A+B Endt No.6:-2 drivers and 1 Cleaner Each Rs.50,000/- P.A. Benefits	Rs.5167-00

It is an Act policy issued under Section 147 of the Motor Vehicles Act. Under the said contract of Insurance policy Company has collected an additional premium of Rs.50/- to cover a legal liability for non-fare paying passenger as IMT No.13. Tribunal has held that claimant was traveling as a paid passenger. Thus, the question that would arise in the instant case would be whether claimant was a fare paid passenger or not and even if not would non-fare paying passenger would be entitled to claim compensation from the Insurance Company or the policy in question would fasten the liability on Insurance Company.

17. In the instant case claimant has taken a specific contention that he was working as a loader/unloader in the offending vehicle. As observed herein above claimant had taken this specific contention in the claim petition as well as in his evidence. To demonstrate that he was not working as a loader/unloader the Insurance Company has produced the school certificate of claimant as per Ex.R.1 The tribunal on appreciation of the pleadings and evidence on record has come to a conclusion that claimant had not proved that at the time of the accident he was working as a loader. In fact the driver of the lorry has not been examined. This would also go to show that conclusion arrived at by the Tribunal that claimant was

not working as a loader/unloader in the offending lorry deserves to be accepted. However, based on the statement made before the police as per Ex.R.2 which has been extracted by the Tribunal in paragraph 20 of the judgment and award it has come to a conclusion that the claimant was travelling as a paid passenger. Claimant was not confronted with this statement in his cross-examination by respondent. Author of Exhibit R.2 is not examined. Even otherwise Insurer has not raised such a plea in the written statement. RW.1 has not stated to the said effect in his evidence. Thus, it cannot be held that claimant was a paid-passenger.

18. Even if claimant is to be construed as a non fare paid passenger further question that would arise is whether it would cover the legal liability of the insurer since an additional premium of Rs.50/- has been collected. The additional premium is collected under IMT 13. Thus, a combined reading of Section 140 clause (c) of Section 145 and IMT 13 it would go to show that Insurer would be liable to indemnify only in the event of claimant falling under clause 13 of IMT and not otherwise. Thus, clause 13 requires to be examined with a microscopic eye and when so examined it would emerge under clause (i) IMT 13 any employee of the insured who is not a workmen within the meaning of Workmen's Compensation Act would be entitled to claim compensation and under clause (ii) such of those persons who come under the category of sub-clause (a) to (c) would also be entitled to claim compensation namely the owner or representative of the goods. Charter or representative of the charterer of the truck or any other persons indirectly connected with the journey in one form or the other. Thus, it has to be examine whether claimant would come under any these categories or payment of premium of Rs.50/- would take within the sweep all or any of these classes of persons or claimant would be entitled to claim compensation from Insurance Company debtors those classes enumerated in IMT 13. Admittedly in the instant case claimant contends that he was travelling as a labourer and it is not the case of claimant that he was a non fare paying passenger or a fare paid passenger. Tribunal has on appreciation of evidence has rightly come to a conclusion that claimant was not a workmen. Claimant would also does not come under any of the categories enumerated in clause (a) to (c) clause No.(ii) of IMT 13. Thus, Tribunal was correct in arriving at a conclusion that insured had paid additional premium of Rs.50/- to cover the risk of non-fare paying passengers as per IMT-13. As seen

from the evidence of claimant and also R.W.1 it is clear that claimant was neither owner or representative of the owner of the goods as contemplated under clause (a) and he was neither a charterer or representative of charterer of the truck in terms of clause (b) of IMT-13. It cannot also be said claimant was a person directly connected with the journey in one form or other in terms of clause (c) of sub-clause (ii) of clause 13 of IMT. The award if any should be in consonance with statutory requirement and not dehors of it or contrary to contractual liability. Hence, liability of Insurance Company cannot be fixed by transgressing the statutory provision or the contractual liability. The Courts are meant to enforce the rule of law and not to pass orders or direction which are contrary to what has been enjoined by law as held by the Hon'ble Supreme Court in the following Judgment:.

(2010)11 Supreme Court Cases 159.

MaharshiDayananad UniversityVs. Surjeet Kaur.

“Para-11: It is settled legal proposition that neither the Court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions.”

Thus, 2nd respondent Insurance Company is not liable to indemnify the claim of appellant as rightly held by the Tribunal. Said conclusion arrived at by the tribunal is based on sound appreciation of facts, evidence and law and does not call for interference in this appeal. Hence, finding of the tribunal deserves to be affirmed and accordingly it is hereby affirmed.

19. Re: Point No.2: Claimant is seeking for enhancement of the compensation contending that compensation awarded under all the heads are abysmally on the lower side. It is contended that tribunal was not justified in awarding only a sum of Rs.50,000/- towards injury, pain and suffering when appellant had amputation of left foot, compound fracture of left leg, loss of right little toe and fracture of lower end of left tibia. It is also contended that when doctor has assessed the permanent disability to the whole body at 60%, tribunal ought not to have awarded only a sum

of Rs.90,000/- towards loss of amenities in life. It is contended that tribunal ought to have taken the income of the claimant atleast at Rs.3,000/- per month. On these grounds learned counsel for appellant seeks for enhancement of compensation.

20. Per contra, learned counsel appearing for the Insurance company submits that question of liability itself having been questioned the Insurance Company is not liable to pay any amount and even in the event of liability is fastened on the Insurance Company it is contended that compensation awarded by the Tribunal under all heads is itself on the higher side which does not call for any interference.

21. Having heard learned advocates appearing for the parties, it is noticed that the Tribunal has awarded compensation of Rs.4,29,866/- under the following heads:

Injury, pain and suffering	Rs.50,000-00
Loss of amenities in future life	Rs.90,000-00
Medical Expenses	Rs.4,000-00
Loss of earning during treatment	Rs.1,666-00
Loss of Future earning capacity	Rs.2,59,200-00
Future Medical expenses	Rs.20,000-00
Conveyance, nourishment and Attendant's charges	Rs.5,000-00
Total	Rs.4,29,866.00

As per the wound certificate Ex.P.4 it would reveal that the claimant had suffered the following injuries:

1. Auto amputation of left foot at the level of ankle.
2. Badly lacerated compound comminuted left knee bones with lose of muscles.
3. Compound fracture of left leg.
4. Lacerated wound over right knee.
5. Loss of right little toe.
6. Lacerated wound over right foot.

7. Badly lacerated wound over right upper eye lid.

X-ray shows Fracture of lower end of left tibia, upper end of left both bones with loss of foot.

The doctor who has been examined before the tribunal on behalf of the claimant is not the doctor who has treated the claimant. The accident in question has occurred on 16-11-1997 and doctor Dr.B.Rajanna P.W.2 is said to have examined the claimant in the year 2006 i.e., after 11 years after the accident. It is on the basis of the records made available to the doctor P.W.2 has opined that on account of amputation above knee there is 60% physical disability to the whole body. The said doctor has admitted in the cross-examination that he has not treated the claimant. It is also admitted by the said doctor that no treatment has been given to the claimant at the Aruna Hospital where the said doctor is said to be working. Thus, taking into consideration the medical evidence available on record tribunal has awarded a sum of Rs.50,000/- towards the injury, pain and suffering. The same is just and reasonable and does not call for enhancement. Based on the very same medical evidence and also considering the age and educational background of the claimant tribunal has awarded a sum of Rs.90,000/- towards loss of amenities which is also just and reasonable. In so far as the compensation awarded under the heading medical bills the tribunal has taken into consideration the bills produced and the sum total of the bills has been awarded which also cannot be found fault with. Even the compensation awarded towards loss of future earning by taking into consideration the income of the claimant at Rs.2,000/- p.m. also cannot be held to be on the lower side for the simple reason that as on the date of the accident claimant was aged about 17 years and thus tribunal was justified in arriving at a conclusion that income of the claimant is to be held at Rs.2,000/- p.m. The said finding also deserves to be affirmed. Thus, viewed from any angle it cannot be held that compensation awarded by the tribunal to be on the lower side which calls for enhancement. Accordingly point No.2 formulated herein above is answered against the appellant.

In View of the discussion made herein above, following order is passed.

ORDER

(i) Appeal is hereby dismissed.

(ii) Judgment and award passed by Additional Civil Judge (Sr.Dn.). Additional MACT. Tumkur in MVC No.29/1998 dated 27-9-2006 is hereby affirmed.

(iii) No order as to costs.

(iv) Registry to draw the award accordingly.

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